IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: Dennis E. Wozniak DEBTOR.	CHAPTER 13 CASE NO. 16-32513 CONFIRMATION HEARING DATE: December 15, 2016 Judge Barnes

ABRI CREDIT UNION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

NOW COMES, a creditor, Abri Credit Union (the "Credit Union"), by and through its attorneys, Kerry Trunkett and Caroline Hasten of Trunkett & Trunkett, P.C., submits its Reply in Support of its Motion to Dismiss the above-captioned Chapter 13 bankruptcy case filed by the Debtor, Dennis E. Wozniak, (the "Debtor") for lack of good faith pursuant to 11 U.S.C. §1307(c). In support of its motion, the Credit Union states as follows:

1. Abri Credit Union is a non-profit member-owned financial institution.

2. On December 11, 2013, the Debtor applied for and received an unsecured loan from the Credit Union in the amount of $6,333.21 for bill consolidation purposes. The Debtor remains indebted to the Credit Union in the amount of $8,766.75.

3. Shortly after receiving the loan, on September 29, 2014, the Defendant defaulted and filed a Chapter 13 Bankruptcy Petition. The Debtor has filed two subsequent bankruptcy petitions and each bankruptcy case has been dismissed for failing to make plan payments.

4. In total, the Debtor has filed twelve (12) bankruptcy cases since 1989. *See Exhibit A of the Credit Union's Motion to Dismiss.*

5. In the past eight (8) years, the Debtor has filed five (5) Chapter 13 petitions, all of which have been dismissed for failure to make plan payments. *See 08-21499, 09-47865, 14-35269,*

15-29724. The Debtor has received a discharge of his debts in Chapter 7 cases twice in the last fourteen (14) years. *See 02-25444; 12-25483.* Due to the Debtor's recent Chapter 7 discharge in 2012, the Debtor is not eligible for another discharge in a Chapter 7 case until 2020. 11 U.S.C. 727(a)(9).

6. In the Debtor's Response to the Credit Union's Motion to Dismiss, the Debtor claims that in his other bankruptcy cases he fell behind in Trustee payments due to reduction in work hours, a decrease in overtime pay, and unexpected medical expenses. However, on the Debtor's sworn Schedule J, he lists $250.00 as medical expenses each month, an amount that has not changed from Schedule J in his two previous Chapter 13 sworn schedules. *See* 15-29724 Schedule J; See 14-35269 Schedule J.

7. "The Court must preserve the integrity of the Bankruptcy system and prevent the abusive use of the Bankruptcy system invoked only to thwart the legitimate rights of creditors, and preclude unwarranted congestion of its docket." *In re Earl*, 140 B.R. 728, 741 (Bankr. N.D.Ind. 1992).

8. In each case, the Credit Union has been forced to file proofs of claim for its unsecured loan believing that it would receive 100% of the general unsecured claim, and, thus, had not objected to the previous bankruptcy filings.

9. The Credit Union never received a trustee payment in any of the previous Chapter 13 cases.

10. Looking at the totality of the circumstances, a court may dismiss a chapter 13 case for lack of good faith in commencing the case. The court considers the following factors: (1) whether the debtor misrepresented facts in the petition . . . (2) the history of filings and dismissals; (3) whether the debtor filed the petition with the intent to defeat other litigation; and

whether there is other egregious behavior. *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992). In this context, the focus of the good faith inquiry is "whether the filing is fundamentally fair to creditors and, more generally, is the filing fundamentally fair in a manner that complies with the spirit of the Bankruptcy Code's provisions." *Id.* The two goals of bankruptcy are to grant a fresh start to the honest but unfortunate debtor and also ensure equitable treatment of creditors. *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991).

11. Looking at the totality of the circumstances and the history of bankruptcy filings and dismissals, the Debtor's most recent Chapter 13 Bankruptcy Petition was filed in bad faith pursuant to 11 U.S.C § 1307(c).

12. Each time the Debtor's chapter 13 case is dismissed, the Debtor files another Chapter 13 in order to delay and hinder the collection efforts of the Credit Union's debt and other creditors' collection efforts in contravention of 11 U.S.C. §1307(c).

13. The Debtor's creditors have been severely prejudiced due to the Debtor filing multiple bankruptcy filings in just the last few years. Specifically, the Credit Union has incurred attorneys' fees and court costs in protecting its rights throughout the Debtor's previous bankruptcy cases and subsequently in state court collection proceeding. With the Debtor's current bankruptcy plan, the Credit Union as an unsecured creditor will only receive 10% of its unsecured claim.

14. All of these facts, taken together, demonstrate a lack of good faith in filing the instant bankruptcy matter. Therefore, this case must be dismissed and the Debtor must be barred from filing another bankruptcy petition.

WHEREFORE, Abri Credit Union prays that this Court grants its Motion to Dismiss this Chapter 13 Case Number 16-32513 and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Abri Credit Union,

By: Caroline O Hasten
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